THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M.No.10015-C of 2006 &
R.S.A. No.3899 of 2006

Date of Decision: 3 -11 - 2006

State of Haryana and others **.....Appellants**

v.

Satpal and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

***

Present: Mr.Ashish Kapoor, Addl.A.G., Haryana
for the appellants.

***

P.S.PATWALIA, J. (Oral)

The plaintiffs who were working as Class IV employees on contractual basis in Sanjay College, Ateli had filed the present suit claiming that Principal of the College had deliberately not marked their attendance for the period 30.5.1995 to 22.8.1995 during which period they had performed their duties and therefore should be paid salary for the aforesaid period. According to the plaintiffs the reason was that they refused to do some domestic chores of the Principal. The lower Appellate Court after going through the evidence in great detail had held the claim of the plaintiffs to be proved on the basis of the following circumstances:-

(i) The appellants were working on different posts on temporary basis and conceedingly being employees of low means, all of them could not have afforded to be absent without reason losing their salary for the period of absence.

(ii) Taking the attendance register to be the index, where the appellants had been shown to be absent, no action on the part of the College was initiated against them.

(iii) Posts on which the appellants were working having work to be attended to do daily, no temporary or contractual appointments were made by the college in place of the appellants: no evidence has been produced by the respondents to show that the work of the seats of the appellants was performed by any other employees. Admittedly no stop-gap arrangement had been made in the period of alleged absence of the appellants.

(iv) Version of the appellants, however, is that they had been continuously attending to their duties during the period of alleged absence but had not been allowed to mark their presence in the attendance register.

(v) Lecturers Bir Singh (PW1) and Satish Kumar (PW2) have proved writing (Ex.P1). Wherein more than 30 employees of the college have vouched that the appellants had attended the college regularly between 30.5.1995 to 22.8.1995 and that they had been attending to their duties but had not been allowed to make their presence in the attendance register at the instance of the Principal Shri Sumer Singh Yadav.

(vi) The appellants had also been shown absent from duty w.e.f. 7.11.1996 to 03.12.1996 through they had allegedly been attending to their duties. They had to approach the Court. They were allowed to mark their presence pursuant to orders of the court. There is admission of the Principal, Shri Sumer Singh Yadav (DW1) on this count.

(vii) There is admission of the Principal Shri Sumer Singh Yadav (DW1) that friction between him and Managing Committee was going on wrongly or rightly, he had believed that the appellants at the instance of Managing Committee were working for his destabilisation. Head Clerk, Jagdish Parshad was siding with the said Principal.

(viii) As per orders dated 08.9.1995 (Ex.P4 to Ex.P6) all the appellants were made regular venom of Principal Sh.Sumer Singh (DW1) against the appellants is clear and categorical when he has deposed that the appellants were wrongly regularised in their employments as they had not been working against sanction posts. When he was pointedly cross-examined further he has admitted that the appellants had been appointed afresh on regular basis after taking over of the College by the Government. He has further admitted that all the employees who were earlier working on temporary basis were given fresh regular employment w.e.f. 07.11.1996 in the Govt. College.

(ix) When the cross-examination became further probing and scrutinizing Principal Shri Sumer Singh (DW1) was unable to disclose as to which of the posts were sanctioned posts and which were not so at the time of taking over the college by the Govt.

(x) There is strong assertion from the Principal that the appellants were sustained and supported by the Managing Committee which was not favourably disposed towards him and that he was even suspended by the Managing Committee in this episode. He has further been candid in admitting that the

Managing Committee was in favour of payment of salary to the appellants for this period but he had strongly opposed the same.

(xi) For alleged absence of second spell as per the appellants, the Principal had not allowed them to mark their presence, though they had been attending the college regularly i.e. during the period 07.11.1996 to 03.12.1996. They have already been paid salary for the said period.

(xii) Sworn testimony of Dharam Pal and Satpal PWs that all the appellants had been attending to their work regularly between 30.5.1995 to 22.8.1995 notwithstanding the fact that they had not been allowed to mark their presence in the attendance register could not be successfully challenged in the interface of attending facts and circumstances, except for the proof offered by the respondents that the attendance register was not showing their, presence and,

(xiii) Head Clerk Jagdish Parshad (DW2) has no explanation to offer as to how all the appellants together were absent from 30.5.1995 to 22.8.1995 and who in their place had been attending to their duties and as to what action had been taken by the College against the appellants for their absence. His deposition is also blank on the score as to why the appellants were not shown absent for this period, when their case for regular appointment was taken up and they in fact were taken in regular employment w.e.f. 07.11.1996."

A firm finding of fact has been recorded by the lower Appellate Court after assessing the entire evidence. I do not find the findings to be perverse so as to warrant interference by way of present regular second appeal.

The application for condonation of delay as also the appeal are therefore dismissed in limine.

(P.S.PATWALIA)
November 3, 2006. **JUDGE**

RC